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NO._____

IN THE
UNITED STATES SUPREME COURT

October 1987 TERM

DANIEL E. MAYON, PLAINTIFF, APPELLEE, PETITIONER

V.

SOUTHERN PACIFIC TRANSPORTATION COMPANY, DEFENDANT, APPELLANT, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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OF COUNSEL:
Russell L. Cook, Jr. & Associates

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QUESTIONS PRESENTED

Whether the Fifth Circuit disregarded the facts and misinterpreted the law in reversing the District Court's setting aside of Award No. 47 of Public Law Board No. 3604.

Whether the Public Law Board exceeded its jurisdiction in arbitrarily and capriciously basing its award outside the collective bargaining agreement.

Whether it contravenes public policy for a Public Law Board to consider the amount of a prior FELA verdict in arbitrating a subsequent wrongful discharge claim.

LIST OF PARTIES

All parties to the case are listed in the style.

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REPORTS OF DECISIONS BELOW

The decisions of the District Court and the Fifth Circuit in this case are unpublished. The Fifth Circuit opinion is fully set out in the Appendix.

JURISDICTIONAL STATEMENT

The Fifth Ciruit rendered its judgment on September 2, 1987. No motions for rehearing or motions for extension of time have been filed.

This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1254(1) and the Railway Labor Act, 45 U.S.C. § 153(q).

STATUTES INVOLVED

The provisions of the Railway Labor Act relevant to this appeal are fully set out in the Appendix.

STATEMENT OF THE CASE

COURSE OF PROCEEDINGS

On September 2, 1983 Petitioner Daniel E. Mayon's suit against Respondent, Southern Pacific Transportation Co. was tried to a jury verdict in favor of Mayon in the amount of $200,000. Daniel E. Mayon v. Southern Pacific Transportation Co., No. B-82-317-CA, United States District Court, Eastern District of Texas - Beaumont Division (1983). Judgment was entered, and Southern Pacific paid Mayon on October 7, 1983. No remittitur was sought; no motion for new trial was filed; and no appeal was perfected. Instead, within two hours of paying the judgment, Southern Pacific notified Mayon that he would not be allowed to

return to work. Mayon proceeded before the Railway Labor Board for reinstatement and back wages. The Public Law Board awarded him reinstatement but less than full back pay. Suit was filed in Daniel E. Mayon v. Southern Pacific Transportation Co., No. B-85-946-CA, United States District Court, Eastern District of Texas - Beaumont Division to set aside that portion of the award granting less than full back pay. The district court set aside the portion of the award which had denied Mayon full recovery and ordered Southern Pacific to pay full back pay. The court of appeals reversed. Southern Pacific Transportation Co. v. Daniel E. Mayon, No. 86-2715, United States Court of Appeals for the Fifth Circuit (Sept.

2, 1987) (unpublished).

STATEMENT OF FACTS

Daniel E. Mayon, an engineer employed by Southern Pacific, injured his back while on the job and filed a lawsuit under the Federal Employer's Liability Act, 45 U.S.C. § 51 et seq. (1971) ("FELA"). Daniel E. Mayon v. Southern Pacific Transportation Co., No. B-82-317-CA, United States District Court, Eastern District of Texas - Beaumont Division. His primary complaint was that his back hurt. He claimed no inability to perform his job, and no such evidence was admitted at trial. At the time his case went to trial, he had been working for over a year on a regular basis. The jury awarded Mayon a verdict in the amount of

$200,000. On October 7, 1983, Mayon's counsel received a telephone call from the Carrier requesting a copy of the deposition of Dr. Ronald L. Fraser. Mr. Mayon's attorney immediately delivered a copy of the deposition requested to Southern Pacific's counsel. On the same day, the settlement papers were signed and delivered to and the Carrier paid the $200,000 judgment. Two hours later, a non-medical officer of Southern Pacific notified Mayon that his employment was terminated for medical reasons. A confirmation letter followed.

Southern Pacific allegedly based its termination of Daniel Mayon on the medical opinion of Dr. Hyder, a medical officer of the company. Dr.

Hyder stated that he based his opinion on the deposition testimony of Dr. Fraser, who served as an expert witness for Daniel Mayon. However, Dr. Hyder admitted that he did not receive a copy of Dr. Fraser's deposition until December 2, 1983 - two months after Mayon was discharged. R. 19. Consequently, the reason given by the Railroad for disqualifying Daniel E. Mayon could not possibly have been valid. Further, the testimony and subsequent letters of the only two doctors directly involved in Mayon's treatment unequivocally stated that Mr. Mayon was medically able to perform his regular duties as a railroad engineer R. 20-21.

Mayon filed for reinstatement

pursuant to the Railway Labor Act, 45 U.S.C. § 153 , First. Public Law Board No. 3607 found that Mayon had continued to work after the injury and until the date of his discharge. R. 27. The Board found "no compelling or even persuasive probative evidence" that proved Mayon could not have continued to work as an engineer after October 7, 1983, the date of his discharge. R. 28.

The neutral doctor, from a three doctor panel, found nothing which would have kept Mayon from his full duties as engineer after October, 1983. R. 26. The Board considered the neutral doctor's statement "persuasive if not dispositive" on the issue of Mayon's medical condition. R. 28.

The Board ordered the Carrier to reinstate Daniel Mayon to his duties as engineer. The award, however, denied him full recovery of back wages lost because of his wrongful discharge. R. 22-24.

In denying full recovery, the Board inferred a future lost earnings component into the damage verdict and money judgment granted in the FELA action. However, there was no evidence before the Board on which it could conclude that any portion of the prior jury award was calculated to compensate Mayon for future lost wages. The Board listed the elements of damage pleaded by Mayon in the FELA suit and noted the absence of a claim for permanent disability. R. 22-23, 49.

Mayon, pursuant to 45 U.S.C. § 153, First (q), filed a petition to set aside the Public Law Board award. R. 1. Mayon also filed a supplemental brief in support of his petition. R. 47. The Court considered Mayon's arguments to be meritorious and ordered his back pay of thirteen months reinstated in full. R. 53. Southern Pacific appealed, and the Fifth Circuit reversed.

SUMMARY OF THE ARGUMENT

An aggrieved employee is entitled to judicial review of a Public Law Board decision when an order fails to confine itself to matters within the Board's jurisdiction. 45 U.S.C. § 153, First (q). Accordingly, the district court was entitled to review and set aside the Public Law Board

order which denied Mayon's full recovery of back wages lost due to his wrongful discharge.

The Board failed to confine itself to matters within its jurisdiction because it considered the thought processes of jurors in awarding damages in an FELA suit; it considered the FELA suit itself; and it reached a conclusion that was entirely irrational and without any basis in fact which conflicted with its own findings. Additionally, public policy dictates that the Board not be allowed to consider FELA suits in determining an award for lost wages as a result of wrongful discharge.

ARGUMENT AND AUTHORITIES

I. The Fifth Circuit erred in reversing the district court's judgment setting aside that portion of Award No. 47 of Public Law Board No. 3607 which denied Daniel E. Mayon full back pay by misinterpreting the facts.

On page 6 of its opinion, the court of appeals states that it would be improper for Daniel E. Mayon to sue his employer claiming total and permanent disability and then force Southern Pacific to reinstate him with full back pay.

A. 12. However, Daniel Mayon never claimed he was totally or permanently disabled. In fact, he claimed the opposite. R. 23. He went back to work shortly after his back injury

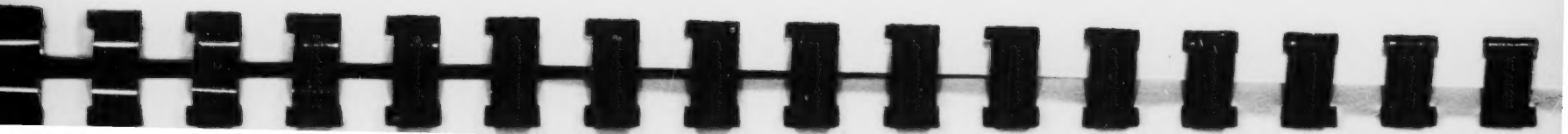
and continued to work until Southern Pacific discharged him two hours after it paid the FELA judgment. R. 27-28.

The entire court of appeals opinion is premised on the mistaken assumption that Mayon was attempting to secure a double recovery for his back injury. This simply is not the case.

Southern Pacific discharged Daniel Mayon under highly suspicious circumstances. The Carrier terminated him only two hours after it paid the FELA judgment. R. 25. A non-medical officer of Southern Pacific told Mayon he was discharged because he was medically disqualified from performing his job as an engineer. R. 7, 25. The Carrier claimed its

decision was based on a deposition which its own doctor did not receive until 60 days after Mayon was disqualified. R. 19.

Because he only lost 17 days of work due to his back and had continued to work throughout the trial, the Carrier's malicious conduct in terminating his employment was totally unforseeable. See, e.g., DeChico v. Metro-North Commuter RR, 758 F.2d 856, 861 (2d Cir. 1985)(that employee might be forced to leave his job was too speculative to support a damage award). Only foreseeable damages are recoverable in a negligence suit. Zippertubing Co. v. Teleflex, Inc., 575 F.2d 1401 (3d Cir. 1985). Moreover, an FELA claimant cannot recover for future



lost wages or future impairment of earning capacity when he has returned to work and is physically able to continue indefinitely in the same job. DeChico, 758 F.2d at 861. Therefore, no part of the jury verdict in the FELA suit could represent damages for future wages lost due to a wrongful discharge. Daniel Mayon does not seek further damages because of his injured back. He seeks only the backpay to which he is rightfully entitled as a result of his wrongful discharge.

II. The Public Law Board exceeded its jurisdiction in denying Daniel Mayon full back pay by basing its award on matters outside the

collective bargaining agreement and by making the award arbitrarily and capriciously.

This case mandates review because the Public Law Board failed to confine itself to matters within the scope of its jurisdiction. The powers of an arbitrator are not limitless. Int'l Union, United Automobile, Aerospace & Agricultural Implement Workers v. Keystone Consolidated Indus., Inc., 782 F.2d 1400, 1403 (7th Cir. 1986).

The Railway Labor Act specifically provides for judicial review of an award when the Board fails to confine itself to matters within its jurisdiction. 45 U.S.C. § 153, First (q). An award exceeds the jurisdiction of an arbitrating body

when the award is wholly baseless and without reason, arbitrary, capricious, unfounded in reason or fact, or when it is based on matters outside the collective bargaining agreement. Gunther v. San Diego & Arizona Eastern Ry Co., 382 U.S. 257 (1965)(wholly baseless and without reason); Teamsters, Chauffers, Warehousemen, Helpers & Food Processors, Local Union 657 v. Stanley Structures, Inc., 735 F.2d 903 (5th Cir. 1984)(arbitrary and capricious); Brotherhood of RR Trainmen v. Central of Georgia Ry Co., 415 F.2d 403 (5th Cir. 1969)(without foundation in reason or fact); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960)(outside collective

bargaining agreement). Public Law Board No. 3607 violated the Railway Labor Act in each of these respects by wrongfully refusing to award Daniel Mayon full back pay.

The Board stated it was not at liberty to disregard that a component of the FELA verdict pertained to lost wages. R. 28. However, this contradicts its own fact finding that the jury verdict was not based on permanent or total disability. R. 23.

Even if a part of the jury verdict represented future lost wages, it could not be used to diminish Mayon's recovery for wrongful discharge. The Board found that Southern Pacific had wrongfully disqualified Mayon from service because the neutral doctor found him

medically fit to perform his job. R. 28. If any part of the jury award represented future lost wages, it would be based on evidence that Mayon would be physically unable to perform his job in the future. The Board found the opposite. Further, no portion of the FELA verdict could possibly be designed to compensate Mayon for wages lost due to wrongful discharge because those damages are not recoverable under the FELA. 45 U.S.C. 51 et seq.; see also e.g., Andrews v. Louisville & Nashville RR, 406 U.S. 320 (1972); Landfried v. Terminal RR Ass'n of St. Louis, 721 F.2d 254 (8th Cir.), cert. denied, 104 S.Ct. 1712 (1984).

More importantly, the thought processes of jurors and the inter-

pretation of an FELA award are beyond the jurisdiction of an arbitrator. The members of the Public Law Boards have superior knowledge of the customs and practices of the railroad industry. Slocum v. Delaware L.&W. R. Co., 339 U.S. 239, 243-44 (1950). Board members are experts in the laws of the shop not the laws of the land. The Board is not competent to interpret the FELA. The Board is only competent to interpret the provisions of collective bargaining agreements. The Board's utilization of Mayon's FELA verdict is the same as if it had reduced his back pay award by the amount of a gift from a wealthy relative to tide the employee over while he was wrongfully withheld from work. The FELA suit did not

relate in any way to the retaliatory discharge action before the Board.

There is absolutely no evidence in the record indicating that the collective bargaining agreement between Daniel Mayon's union and Southern Pacific authorized the Public Law Board to reduce his back pay award due to his FELA verdict. The agreement required evidence submitted to the Board be confined to the record previously submitted by each party. The jury deliberations in the FELA action were not a part of that record. Where the Board's award shows manifest disregard of the collective bargaining agreement, the district court must vacate the award. Amoco Oil Co. v. Oil, Chemical & Atomic Workers Int'l

Union, 548 F.2d 1288, 1294 (7th Cir. 1977)(citing Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1128 (3d Cir. 1969)).

The Board, by reaching outside the collective bargaining agreement and into the realm of pure speculation, concluded that a future lost earnings component was present in the FELA verdict. This represents an unwarranted attempt to "dispense its own brand of industrial justice." Such actions were prohibited by this Court in United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960).

Mayon was able to work. The Board found no probative evidence that he could not have continued to

work after his discharge. R. 28. He claimed no incapacity. While the arbitrator has some discretion in formulating remedies, "it is clear that he is not utterly a free agent even in that respect." Brotherhood of Trainmen v. Central of Georgia Ry Co., 415 F.2d 403 (5th Cir. 1969).

The Board speculated as to the jurors' mental processes in Mayon's FELA case and, based on this speculation, inferred that the verdict included an award for future lost wages. In so doing, the Board exceeded its authority granted under the collective bargaining agreemnet and subjected itself to judicial review. The Board overstepped its jurisdiction by considering facts not before it and by taking upon itself

the duty of interpreting the jurors' motives.

III. For a Public Law Board to consider a prior FELA judgment in ruling on a wrongful discharge claim contravenes public policy.

To allow an arbitrator to consider FELA settlements, verdicts, and judgments in fashioning an award for back pay as a result of retaliatory discharge creates a patently unfair situation for any FELA claimant. It invites the Carrier to collaterally attack the damages awarded in any FELA suit by wrongfully discharging the employee. In essence, if the wrongfully terminated employee is reinstated with less than full pay, he will receive less than what the jury had

intended. The result is significant interference with the Federal Employers' Liability Act by an arbitrator, and an open invitation to retaliate and deter future legitimate claims should the jury's decision not conform to what the Carrier expected.

The FELA and the Railway Labor Act serve completely different purposes and protect completely separate interests. The FELA was enacted to protect railroad employees who are physically injured through the negligence of their employer and thus compel the railroads to better safeguard the lives of those who work for them. 45 U.S.C. § 51; Wilkerson v. McCarthy, 336 U.S. 53, 68 (1969) (Douglas, J., concurring)("the Federal Employers' Liability Act was

designed to put on the railroad industry some of the cost for the legs, eyes, arms, and lives which it consumed in its operations."). Conversely, the Railway Labor Act was enacted to regulate the railroad industry by providing for the resolution of disputes arising out of the interpretation of collective bargaining agreements concerning wage rates, rules, and working conditions. 45 U.S.C. § 153, First(i); Pennsylvania RR Co. v. Day, 360 U.S. 548, 551 (1959). Because the two acts remedy vastly different problems, common sense dictates that an arbitrator fashioning a remedy for wrongful discharge under the Railway Labor Act should not be allowed to reduce the award by any amount of an

FELA judgment which was rendered to compensate the employee for personal injuries. To allow such a mixing of apples and oranges emasculates both acts by allowing the railroads to circumvent one act through use of the other as happened to Daniel E. Mayon.

Mayon was injured on the job through Southern Pacific's negligence. He pursued his rights under the FELA and obtained a favorable verdict. Rather than challenge that verdict in the courts, the Railroad chose to collaterally attack the personal injury judgment by discharging Mayon thus throwing the whole dispute under the Railway Labor Act. By inducing the Public Law Board to reduce Mayon's back pay award by a speculative amount based on the

personal injury verdict, the Carrier effectively reduced his FELA recovery by approximately $20,000, the amount of back wages the Board denied. Neither the purpose of the FELA nor that of the Railway Labor Act are served by such a scenario. If this Court allows the Board award to stand, then it will invite similar and more egregious conduct by the railroads which will add insult and monetary injury to the already serious physical injuries frequently suffered by railroad employees.

CONCLUSION

To reach its result denying Daniel Mayon full back pay, Public Law Board No. 3607 had to reach beyond the collective bargaining

agreement and the record before it into the speculative realm of the minds of jurors in a completely unrelated lawsuit. This exceeded the Board's jurisdiction.

Further, for the Board to consider a prior FELA verdict in fashioning a Railway Labor Act award contravenes public policy and risks emasculating both statutes by allowing the railroads to circumvent one act by invoking the other. Such conduct should not be tolerated by this Court.

WHEREFORE PREMISES CONSIDERED, Petitioner, Daniel E. Mayon respectfully prays that this Court grant Writ of Certiorari and reverse the decision of the Fifth Circuit Court of Appeals and affirm the

decision of the United States District Court for the Eastern District of Texas - Beaumont Division setting aside that portion of Award No. 47 of Public Law Board No. 3607 denying Daniel E. Mayon recovery of full back pay, and for such further relief to which Petitioner shows himself justly entitled.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on all attorneys of record by certified mail return receipt requested or by hand delivery on this 30th day of November, 1987.

RUSSELL L. COOK, JR.

APPENDIX

IN THE UNITED STATES COURT OF

APPEALS FOR THE FIFTH CIRCUIT

No. 86-2715

DANIEL E. MAYON,

Plaintiff-Appellee,

VERSUS

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

Defendant-Appellant.

Appeal from the United States District Court For the Eastern District of Texas (B-85-946-CA)

(September 2, 1987)

Before RANDALL, GARWOOD and DAVIS, Circuit Judges.

PER CURIAM:*

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the

public and burden on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The question presented in this case is whether the district court erred in setting aside the award of an arbitration board. Because of the deference due the board's decision, we conclude that the district court committed error in setting aside its award. Accordingly, we reverse and reinstate the award of the board.

I.

Daniel E. Mayon is employed by appellant, Southern Pacific Transportation Company (SP), as a locomotive engineer. In May 1981, Mayon injured his back throwing a switch and instituted a damage action against SP under the Federal Employer's Liability Act (FELA). Mayon claimed damages for pain and suffering, loss of past and future wages, and other general tort

damages. In September 1983, the jury returned a general verdict in favor of Mayon for $200,000. At the time of trial, Mayon had missed only seventeen days' work because of his injuries. On October 7, 1983, SP paid the judgment and on that same day discharged Mayon on grounds that he was medically disqualified from performing his duties as an engineer. This decision was predicated on deposition testimony of one of Mayon's expert medical witnesses.

Mayon sued SP in federal district court for wrongful discharge but that suit was dismissed on grounds that Mayon's sole remedy was under the Railway Labor Act, 45 U.S.C. § 151, et seq. Mayon v. Southern Pacific Transportation Co., 632 F.Supp. 944

(E.D. Tex.), aff'd, 805 F.2d 1250 (5th Cir. 1986). Mayon then proceeded to arbitration before the Public Law Board (the Board) for reinstatement and back wages as required by the Railway Labor Act, 45 U.S.C. § 153. The Board found that Mayon should be reinstated, but although thirteen months had elapsed since Mayon's discharge, the Board awarded him only six months' back pay. The Board reasoned that: ". . . In determining the amount [of back pay] we are not at liberty to disregard that a component of the $200,000 judgment that the claimant received pertained to lost earnings . . . We find that a reasonable and fair disposition of the lost earnings issue is to take cognizance, in some part, of the money judgment received

by the claimant." Mayon then filed this suit to set aside that part of the Board's award limiting him to six months' back pay. The district court, without explanation, ordered back pay for the full thirteen-month term of Mayon's discharge. SP brings this appeal.

II.

The scope of judicial review over both legal and factual determinations made by a labor arbitration board vested with jurisdiction by the Railway Labor Act is exceedingly narrow.[1]

1. The Board's jurisdiction to resolve the dispute is not wrongful discharge claim, we held that Mayon's retaliatory discharge was within the exclusive jurisdiction of the Board: "Disputes under a collective bargaining agreement involving discharges are 'minor' disputes that must be submitted to grievance procedures ending in arbitration under the RLA". (citing cases). Mayon v. Southern Pacific Transportation Co., 805 F.2d 1250, 1251.

As we stated in Air Line Pilots Association, International v. Eastern Airlines, Inc., 632 F.2d 1321, 1323 (5th Cir. 1980):

> The range of judicial review in cases arising under the Railway Labor Act is "among the narrowest known to the law." . . . The findings and order of an Adjustment Board are final and conclusive and subject to very limited review. An order may be set aside or remanded on one of three grounds as set forth in 45 U.S.C. § 153(q): (i) failure of the [Board] to comply with the requirements of [the Act]; (ii) failure of the order to conform, or confine itself, to matters within the scope of the [Board's] jurisdiction; or (iii) fraud or corruption by a member of the [Board] making the order . . . "An award must be enforced, without judicial review of the evidence, if it draws its essence from the collective bargaining agreement."

No contention is made that the Board did not comply with the requirements of the Act or that a member of the Board was guilty of fraud or corruption in making the

order. Mayon's only argument is that because the Board acted irrationally and without factual basis in awarding him only six months' back pay, it exceeded its authority. Mayon argues in essence that because the jury did not declare whether any part of its FELA award was for lost future earnings, the Board had no factual basis for awarding him less than full back pay.

The collective bargaining agreement is not included in the record but the parties point to no provision in that agreement that compels an award of full back pay on reinstatement and we assume there is no such provision. Similarly, we assume that the collective bargaining agreement is silent on whether a back

pay award is to be reduced by an FELA damage award.

The appellee misapprehends the role of an arbiter. The Supreme Court spoke to this question in United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, 4 L.Ed.2d 1424, 1428 (1960):

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.

See also Brotherhood of Railroad Trainmen v. Central of Georgia Railway Co., 415 F.2d 403 (5th Cir.

(1969).

The Board is not limited to common law remedies. "As long as the award is essentially drawn from the agreement it is valid and effectively etched in stone. . . . A wide variety of situations may arise, many of which may never have been considered by the draftsmen of the collective bargaining agreement." Air Line Pilots, 632 F.2d 1321, 1324.

This case presents such a situation. The employer had just paid a $200,000 judgment to Mayon predicated in part on Mayon's medical evidence that the injury would hinder his future ability to perform his job as a locomotive engineer. Although the Board, after considering additional medical evidence, found

inadequate support for the discharge, the actions of the employer were not totally unjustified.

Under these circumstances, the Board fashioned the remedy it considered fair: reinstatement without full back pay. In reaching a fair resolution to this problem, the Board apparently shared the view of this court in Hodges v. Atlantic Coastline Railroad Co., 363 F.2d 534, 539 (5th Cir. 1966).

> [W]e feel compelled to say that we strongly disapprove of any practice which permits an employee to sue his employer claiming permanent and total disability, establish his claim by proof which convinces the jury of the truth and justice of his allegations, obtain and collect a judgment, and then force his employer to reinstate him in his former position with back pay for time lost.

The Board acted within its

authority. The district court was not authorized to second guess the arbiter. Accordingly, the judgment of the district court is reversed and the award of the Board is reinstated.

REVERSED.

RELEVANT PROVISIONS OF THE RAILWAY LABOR ACT

45 U.S.C. § 153, First (q)

If any employee of group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall

file in the court the record of the proceedings on which it based its action. The Court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a

member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of Title 28.